IN THE

# Supreme Court of the United States

October Term, 1976
No. 76-71

LOS ANGELES TIMES, a division of THE TIMES MIRROR COMPANY, PAUL CONRAD, THE TIMES MIRROR COMPANY, a corporation, OTIS CHANDLER, ANTHONY DAY,

*Petitioners,*

*vs.*

FRED L. HARTLEY,

*Respondent.*

## REPLY BRIEF.

WILLIAM A. MASTERSON,
333 South Hope Street—48th Floor,
Los Angeles, Calif. 90071,
*Attorney for Petitioners.*

ROBERT C. LOBDELL,
WILLIAM A. NIESE,
SHEPPARD, MULLIN, RICHTER & HAMPTON,
333 South Hope Street—48th Floor,
Los Angeles, Calif. 90071,
*Of Counsel.*

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## REPLY BRIEF.

### JURISDICTION.

Petitioners submit this Reply Brief pursuant to Supreme Court Rule 24. The purpose of this Reply Brief is to concisely address two issues raised in respondent Hartley's Brief in Opposition to the Petition for a Writ of Certiorari.

### POINT I.

### This Court Has Jurisdiction Pursuant to 28 U.S.C. §1257(3) and Supreme Court Rule 19.

Respondent in his Brief in Opposition (herein "Brief") contends that the Court has no jurisdiction on the ground that the decisions of the California

Supreme Court and California Court of Appeal below are not final judgments or decrees within the meaning of 28 U.S.C. §1257(c).

Respondent's claim is wrong. The summary judgment entered on behalf of petitioners upon order of the trial court is a final judgment which is appealable under California law. California Code of Civil Procedure §437(c); *King v. State,* 11 Cal.App.3d 307 (1970); *Oliver v. Swiss Club Tell,* 222 Cal.App.2d 528 (1963). Further, the judgment of the Court of Appeal reversing the trial court's judgment of summary judgment for petitioners became a final judgment on appeal within thirty days after filing. Rule 24(a), *California Rules of Court; Chin Ott Wong v. Title Ins. & Trust Co.,* 91 Cal.App.2d 1 (1949). Similarly, the decision of the Supreme Court, whether it be an order denying a petition for hearing or otherwise, is a final judgment thirty days after filing of that decision. Rule 24(a), *California Rules of Court.*

This Court has followed a pragmatic approach in determining whether a decision of the highest state court on a federal issue is a final judgment or decree. *Cox Broadcasting Corp. v. Cohn,* 420 U.S. 469, 955 S.Ct. 1029, 43 L.Ed.2d 328 (1975). This approach is necessary to protect the interests of parties who might otherwise be adversely affected by the Court not reviewing the federal issues raised in the state court actions. For this reason, this Court has long held that it is proper for the Court to invoke jurisdiction under 28 U.S.C. §1257(3) to review the judgment of an intermediate state court of appeal where the supreme court of that state in its discretion declined to review the judgment. *Chicago & E.I.R. Co. v. Ind. Comm. of Ill.,* 284 U.S. 296, 52 S.Ct. 151, 76 L.Ed. 304 (1931). Thus, the mere fact that the California Supreme Court declined to grant a hearing on the Court of Appeal's reversal of the summary judgment in favor of petitioners does not preclude this Court from reviewing the important constitutional questions raised by the Petition for Certiorari.



This determination of the issues raised in this case is mandated by the decisions of this Court and others. Following the guidelines enumerated in *New York Times v. Sullivan,* the majority of the cases support the position that because of the importance of free speech, summary judgment should be the rule and not the exception. *Washington Post Co. v. Keogh,* 365 F.2d 965, 968 (D.C. Cir. 1966); *Guitar v. Westinghouse Electric Corp.,* 396 F.Supp. 1042 (S.D.N.Y. 1975); and cases cited at pages 25-26 of petitioners' Petition for Writ of Certiorari. This Court has jurisdiction to review state court decisions denying summary judgment to defendants in defamation actions. Otherwise, there will exist the chilling effect on First Amendment rights proscribed by *New York Times v. Sullivan,* 376 U.S. at 285-286, 84 S.Ct. at 728-729.

## POINT II.

**Petitioners Contend That the Cartoon Involves Only Opinion on Public Figures on Matters of Serious Public Interest and Is Therefore Constitutionally Protected.**

Respondent contends that the California Court of Appeal ruled the cartoon contained a statement of fact and that it is misleading for petitioners in their Petition to refer to it as an expression of opinion (Brief, p. 10).

This claim reflects respondent's total misconception of petitioners' position. It is precisely because the California Court of Appeal erroneously held that the cartoon contained a false statement of fact and improperly applied the requirements of *New York Times* (a judgment acquiesced with by the California Supreme Court), that petitioners seek relief from this Court. Petitioners do not mislead by claiming that the cartoon contains only opinion. That is exactly their position. This position is supported by the relevant decisions and a common sense view of the cartoon itself.

The Petition sets forth in detail the reasons and authorities why the cartoon involves only opinion. In addition, petitioners invite the Court's attention to the decision of the Second Circuit Court of Appeals in *Buckley v. Littell,* Docket No. 75-7358 (June 30, 1976). *Buckley* is strong support for the positions articulated in the Petition and is an excellent example of the proper application of this Court's guidelines to actions involving allegedly defamatory statements.

Plaintiff Buckley had brought an action for defamation against Littell for allegedly libelous statements contained in a book written by Littell. The district judge held that the book charged Buckley with being



a "fellow traveler" of the fascists. The Circuit refused to accept this determination. Instead, the court stated as follows:

> "The judge's view of the book was that [i]t is clear that Buckley is charged with being a fellow traveler of the fascists. 394 F.Supp. at 925. But the book does *not* say this; this is an interpretation of the passage which is possible, but it is only one interpretation.
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> * * *
>
> "It can be seen, the moment we are involved in ascertaining what meaning Littell's statement purports to convey, that we are in the area of opinion as opposed to factual assertion." (*Buckley* at pp. 4612, 4617.)

*Buckley* is directly in line until this Court's decision in *Greenbelt Coop. Pub. Assn. v. Bresler,* 398 U.S. 6, 26 L.Ed.2d 6, 90 S.Ct. 1537 (1970). To sum up, these cases hold that expressions of opinion are not actionable and the constitutional standard for determining whether a publication is defamatory is not whether it contains a possible defamatory meaning to some person.

**Conclusion.**

For the above reasons and those stated in the Petition, this Court should grant certiorari.

Respectfully submitted,

WILLIAM A. MASTERSON,
*Attorney for Petitioners.*

ROBERT C. LOBDELL,
WILLIAM A. NIESE,
SHEPPARD, MULLIN, RICHTER & HAMPTON,
*Of Counsel.*